

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

GAREY E. LINDSAY, Regional Director of the Ninth
Region of the National Labor Relations Board, For
and On Behalf of the NATIONAL LABOR
RELATIONS BOARD

Applicant

v.

Civil No. 1:18-mc-00028

KRISTA KAVANAUGH, AN INDIVIDUAL

Respondent

APPLICATION FOR ORDER REQUIRING OBEDIENCE
TO SUBPOENA AD TESTIFICANDUM

To the Honorable Judges of the United States District Court for the Southern District of
Ohio:

The National Labor Relations Board, (Board), an administrative agency of the Federal
Government created pursuant to the National Labor Relations Act, as amended 29 U.S.C.
Sec. 151, et seq., (Act), by its General Counsel and by Eric V. Oliver, Regional Attorney for
Region 9, respectfully applies to this honorable Court, pursuant to Section 11(2) of the Act, for
an order requiring Krista Kavanaugh, an individual, herein referred to as Respondent, to obey the
subpoena ad testificandum issued to her by the Board and duly served upon her in the manner
provided by law. In support of said application, upon information and belief, the Board asserts
as follows:

(a) This Court has jurisdiction of the subject matter of the proceeding and of Respondent
by virtue of Section 11(2) of the Act (29 U.S.C. 161(2)). That is, the alleged unfair labor
practices and the investigation for which Respondent was subpoenaed to testify occurred within
this judicial district. Further, Respondent resides in Hamilton County, within the jurisdiction of

this Court.

(b) Pursuant to the provisions of Section 6 of the Act, the Board has issued Rules and Regulations (Rules), governing the conduct of its operations, which have been published in the Federal Register [24 F.R. 9095], as provided for in the Administrative Procedure Act [5 U.S.C. Sec. 522]. This Court may take judicial notice of said Rules by virtue of 44 U.S.C. Sec. 307.

(c) This application arises as a result of events in an unfair labor practice investigation currently pending before the Board. The Board process began when an unfair labor practice charge was filed in Case 9-CA-226011 alleging that PAX Corrugated Products, Inc. (Employer) violated sections 8(a)(1) and (3) of the Act by maintaining unlawful work rules, unlawfully interrogating employees about their protected concerted activity, and discharging an employee for engaging in protected concerted activity. The Employer is a manufacturing company with a facility located in Lebanon, Ohio. (A copy of the charge and first amended charge are attached as Exhibit A).

(d) Pursuant to the provisions of Section 10(a) and Section 11(1) of the Act [29 U.S.C. Sec. 160(a) and Sec. 161(1)], an investigation into the alleged unfair labor practices described above in paragraph (c) was commenced by the General Counsel of the Board, on behalf of the Board, under the supervision and direction of the Regional Director for Region 9 of the Board.

(e) As part of the investigation described above in paragraph (d), evidence was presented to show that Respondent possessed evidence or information necessary to assist the Regional Director in the pending investigation.

(f) On September 14, 2018, a Board Agent telephoned Respondent requesting to meet with Respondent to obtain an affidavit from her. Respondent refused to cooperate with the investigation at that time.

(g) On September 28, 2018, the Board caused to be issued a subpoena *ad testificandum*, directed to Respondent, requiring Respondent to attend and provide a sworn affidavit on October 4, 2018, in Cincinnati, Ohio. Said subpoena *ad testificandum* was issued under the authority of the Board and in the manner and form provided for in Section 11(1) of the Act and Section 102.31(a) of the Rules. The subpoena *ad testificandum* was mailed by certified mail via the United States Postal Service. A cover letter was enclosed with the subpoena inviting Respondent to contact the Board agent and make alternative arrangements if the time and location listed on the subpoena to provide the affidavit was inconvenient. (A copy of the cover letter and subpoena are attached as Exhibits B and C respectively).

(h) Respondent signed for the subpoena (via USPS certified mail) on October 3, 2018, and telephoned the Board agent that same day and again refused to comply with it.

(i) Respondent failed to appear and provide an affidavit on October 4, 2018, as required by the subpoena.

(j) Respondent's unwillingness and/or failure to provide affidavit testimony as required by the subpoena *ad testificandum* constitutes contumacious conduct within the meaning of Section 11(2) of the Act. Furthermore, Respondent's conduct is preventing the Board from carrying out its duties and functions under the Act.

In view of Respondent's failure to comply with the subpoena, the Board requests:

(1) That an order to show cause issue directing Respondent to appear before this Court on a date specified in the order, and to show cause why an order should not issue directing her to appear before an agent of the Board in Case 9-CA-226011, at a time and place fixed by an agent of the Board, and to give testimony and answer all questions relevant to the matters in question in the unfair labor practice proceeding pending before the Board.

(2) That, after considering any arguments in response to the order to show cause, the Court issue an order requiring Respondent to appear before an agent of the Board, at a time and place to be fixed by an agent of the Board, and to give testimony and answer all questions relevant to the matters in question in the unfair labor practice proceedings before the Board.

(3) That the applicant, National Labor Relations Board, have such other and further relief as may be necessary and appropriate.

Dated: October 27, 2018

/s/ Erik Brinker

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Attachments